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c 514 Unconscionable Transactions Relief Act

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CHAPTER 514

Unconscionable Transactions Relief Act

1. In this Act,

Interpre-
tation

(a) "cost of the loan" means the whole cost to the debtor of money lent and includes interest, discount, subscription, premium, dues, bonus, commission, brokerage fees and charges, but not actual lawful and necessary disbursements made to a land registrar, a clerk of a county or district court, a sheriff or a treasurer of a municipality;

(b) "court" means a court having jurisdiction in an action for the recovery of a debt or money demand to the amount claimed by a creditor in respect of money lent;

(c) "creditor" includes the person advancing money lent and the assignee of any claim arising or security given in respect of money lent;

(d) "debtor" means a person to whom or on whose account money lent is advanced and includes every surety and endorser or other person liable for the repayment of money lent or upon any agreement or collateral or other security given in respect thereof;

(e) "money lent" includes money advanced on account of any person in any transaction that, whatever its form may be, is substantially one of money-lending or securing the repayment of money so advanced and includes and has always included a mortgage within the meaning of the *Mortgages Act*. R.S.O. 1980, c. 296, s. 1.

2. Where, in respect of money lent, the court finds that, having regard to the risk and to all the circumstances, the cost of the loan is excessive and that the transaction is harsh and unconscionable, the court may,

(a) reopen the transaction and take an account between the creditor and the debtor;

reopen
transaction
and take
account

reopen
former settle-
ments

(b) notwithstanding any statement or settlement of account or any agreement purporting to close previous dealings and create a new obligation, reopen any account already taken and relieve the debtor from payment of any sum in excess of the sum adjudged by the court to be fairly due in respect of the principal and the cost of the loan;

order
repayment
of excess

(c) order the creditor to repay any such excess if the same has been paid or allowed on account by the debtor;

set aside
or revise
contract

(d) set aside either wholly or in part or revise or alter any security given or agreement made in respect of the money lent, and, if the creditor has parted with the security, order him to indemnify the debtor. R.S.O. 1970, c. 472, s. 2.

Exercise of
powers of
court,

3. The powers conferred by section 2 may be exercised,

in action by
creditor

(a) in an action or proceeding by a creditor for the recovery of money lent;

in action by
debtor

(b) in an action or proceeding by the debtor notwithstanding any provision or agreement to the contrary, and notwithstanding that the time for repayment of the loan or any instalment thereof has not arrived;

in other
proceedings

(c) in an action or proceeding in which the amount due or to become due in respect of money lent is in question. R.S.O. 1970, c. 472, s. 3.

Relief by
way of
originating
notice in
county court

4.—(1) In addition to any right that a debtor may have under this or any other Act or otherwise in respect of money lent, he may apply for relief under this Act to a judge of the county or district court of the county or district in which he resides, and the judge on the application may exercise any of the powers of the court under section 2.

Removal of
proceedings
into
Supreme
Court

(2) Where an application is made under subsection (1), the judge may, if he sees fit, at any time before disposing of the application, by order remove the proceedings into the Supreme Court.

Idem

(3) Where an order is made under subsection (2), the clerk of the county or district court shall forthwith transmit the papers in the case to the proper office of the Supreme Court in the county or district in which the application was made.

(4) When the papers have been received in the proper office ^{Idem} of the Supreme Court, the application is *ipso facto* removed into the Supreme Court and shall be heard and determined by a judge of the Supreme Court, and the judge on the application may exercise any of the powers of the court under section 2 or he may direct an issue.

(5) An appeal lies to the Court of Appeal from any order made ^{Appeal} under subsection (1) or (4). R.S.O. 1970, c. 472, s. 4.

5. Nothing in this Act affects the rights of a *bona fide* ^{Saving} assignee or holder for value without notice, or derogates from ^{*bona fide*} the existing powers or jurisdiction of any court. ^{holder for value, and} R.S.O. ^{existing} 1970, c. 472, s. 5. ^{jurisdiction}

